

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SARITA N.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 3:19-cv-05809

AMENDED ORDER
AFFIRMING DEFENDANT'S
DECISION TO DENY
BENEFITS

Plaintiff has brought this matter for judicial review of Defendant's denial of her applications for disability insurance ("DIB") and supplemental security income ("SSI") benefits. The parties have consented to have this matter heard by the undersigned Magistrate Judge. 28 U.S.C. § 636(c); Federal Rule of Civil Procedure 73; Local Rule MJR 13. The ALJ's decision is affirmed, for the reasons described below.

I. ISSUES FOR REVIEW

1. Did the ALJ err in evaluating the medical opinion evidence?
2. Did the ALJ properly evaluate Plaintiff's symptom testimony?
3. Did the ALJ err in assessing lay witness statements?

II. BACKGROUND

Plaintiff filed applications for DIB and SSI on July 20, 2007, alleging a disability onset date of January 1, 2005. AR 33, 132-36. Plaintiff amended her alleged onset date to June 4, 2007. AR 33, 650. Plaintiff's applications were denied initially and upon reconsideration. AR 33, 94-95, 96-99. A hearing was held before Administrative Law

1 Judge ("ALJ") M.J. Adams on March 23, 2010. AR 645-86. On June 18, 2010, ALJ
2 Adams issued a decision finding that Plaintiff was not disabled. AR 30-45, 2140-55. On
3 July 13, 2011, the Social Security Appeals Council issued an order vacating ALJ
4 Adams' decision and remanding the case for further proceedings. AR 72-74.

5 On February 14, 2012, a new hearing was held before ALJ Michael Gilbert. AR
6 687-758. On July 6, 2012, ALJ Gilbert issued a decision finding that Plaintiff was not
7 disabled. AR 9-29, 791-811, 2119-39. On April 6, 2013, the Appeals Council denied
8 Plaintiff's request for review. AR 844-47, 2114-18.

9 On February 12, 2014, this Court granted a stipulated motion to reverse and
10 remand this case for further administrative proceedings. AR 812-24, 2173-76. On March
11 25, 2014, the Appeals Council vacated ALJ Gilbert's July 6, 2012, and remanded this
12 case for consideration of an unadjudicated period and Plaintiff's symptom testimony. AR
13 825-29.

14 On March 5, 2015, ALJ Gilbert held a new hearing. AR 1970-2034. On August 3,
15 2016, ALJ Gilbert issued a decision finding that Plaintiff was not disabled. AR 759-90,
16 2078-2109. On November 15, 2017, this Court granted a stipulated motion to reverse
17 and remand this case for further administrative proceedings. AR 2038; Dkt. 14-1.

18 On January 9, 2018, the Appeals Council issued an order vacating ALJ Gilbert's
19 August 3, 2016 decision, and remanding this case for re-consideration of the opinions of
20 Daniels Neims, Psy.D. and Bryan Zolnikov, Ph.D., as well as statements from Plaintiff's
21 daughter. AR 2073-77, 2162-67.

1 On December 12, 2018, ALJ Joanne Dantonio held a new hearing. AR 2611-65.
2 On May 1, 2019, ALJ Dantonio issued a decision finding that Plaintiff was not disabled.
3 AR 2035-71.

4 Plaintiff seeks judicial review of ALJ Dantonio's May 1, 2019 decision, and asks
5 this Court to remand this case for an award of benefits. Dkt. 14. Plaintiff, who returned
6 to work in March 2017, seeks disability benefits for a closed period between June 4,
7 2007 and March 1, 2017. AR 2039, 2633-34.

8 III. STANDARD OF REVIEW

9 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
10 denial of social security benefits if the ALJ's findings are based on legal error or not
11 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874
12 F.3d 648, 654 (9th Cir. 2017). Substantial evidence is "such relevant evidence as a
13 reasonable mind might accept as adequate to support a conclusion." *Biestek v.*
14 *Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations omitted).

15 IV. DISCUSSION

16 In this case, ALJ found that Plaintiff had the severe, medically determinable
17 impairments of carpal tunnel syndrome; degenerative disc disease of the cervical and
18 lumbar spine, status-post cervical fusion; chronic sinus disease; migraine headaches;
19 bipolar disorder; attention deficit hyperactivity disorder, combined type ("ADHD");
20 borderline personality disorder, not otherwise specified; antisocial personality disorder;
21 schizoaffective disorder; and polysubstance abuse and dependence, in remission since
22 2012. AR 2041. The ALJ also found that Plaintiff had the non-severe impairments of
23 congenital hypoplasia and patent foramen ovale. AR 2041-42.

1 Based on the limitations stemming from Plaintiff's impairments, the ALJ found
 2 that Plaintiff could perform a reduced range of light work. AR 2046. Relying on
 3 vocational expert ("VE") testimony, the ALJ found that Plaintiff could not perform her
 4 past work, but could perform other light, unskilled jobs; therefore, the ALJ determined at
 5 step five of the sequential evaluation that Plaintiff was not disabled. AR 2068-70, 2653-
 6 55.

7 A. Whether the ALJ properly evaluated the medical opinion evidence

8 Plaintiff contends that the ALJ erred in evaluating the opinions of reviewing
 9 medical expert William DeBolt, M.D., examining sources Aaron Bunnell, M.D., Michelle
 10 Tanner Karuna, M.D., Loren W. McCollom, Ph.D., Anna Borisovskaya, M.D., Terilee
 11 Wingate, Ph.D., Daniel M. Neims, Psy.D., and Bryan Zolnikov, Ph.D. Dkt. 14, pp. 4-13.

12 In assessing an acceptable medical source – such as a medical doctor – the ALJ
 13 must provide "clear and convincing" reasons for rejecting the uncontradicted opinion of
 14 either a treating or examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir.
 15 1995) (citing *Pitzer v. Sullivan*, 908 F.2d 502, 506 (9th Cir. 1990)); *Embrey v. Bowen*,
 16 849 F.2d 418, 422 (9th Cir. 1988)). When a treating or examining physician's opinion is
 17 contradicted, the opinion can be rejected "for specific and legitimate reasons that are
 18 supported by substantial evidence in the record." *Lester*, 81 F.3d at 830-31 (citing
 19 *Andrews v. Shalala*, 53 F.3d 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d
 20 499, 502 (9th Cir. 1983)).

21 1. Dr. DeBolt

22 Medical expert Dr. DeBolt reviewed the available medical record and testified
 23 concerning Plaintiff's impairments and functional limitations on February 14, 2012. AR
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1 693-703. Dr. DeBolt opined that due to Plaintiff's physical impairments, primarily
2 cervical spondylosis, Plaintiff would be limited to lifting 50 pounds rarely, 20 pounds
3 occasionally, and 10 pounds frequently, and could sit, stand, and walk for an eight-hour
4 day. AR 696-97. Dr. DeBolt stated that Plaintiff would not have any manipulative
5 limitations. AR 697.

6 The ALJ assigned "significant weight" to Dr. DeBolt's hearing testimony,
7 reasoning that it was consistent with the records he reviewed, that Plaintiff's exertional
8 capacity had not significantly worsened since his review, and that Plaintiff was ultimately
9 able to return to a job that the vocational expert testified was performed at the light
10 exertional level. AR 2062. The ALJ assigned less weight to Dr. DeBolt's opinion that
11 Plaintiff did not have any manipulative limitations, finding that Dr. DeBolt relied on
12 normal electrodiagnostic test results from July 2011, and subsequent records indicate
13 that Plaintiff's hand functioning was limited by carpal tunnel syndrome. *Id.*

14 Plaintiff contends that Dr. DeBolt did not review any of Plaintiff's medical records
15 since 2012 or Plaintiff's testimony, and did not account for the limitations caused by
16 Plaintiff's pain. Dkt. 14, p. 4.

17 Here, the ALJ acknowledged that Dr. DeBolt was only able to review the medical
18 record through 2012, and accounted for additional limitations that manifested
19 afterwards, when assessing Plaintiff's residual functional capacity ("RFC"). With respect
20 to Plaintiff's argument regarding pain, Plaintiff does not indicate how the existing RFC is
21 insufficient to account for Plaintiff's pain complaints. *See Valentine v. Comm'r Soc. Sec.*
22 *Admin.*, 574 F.3d 685, 693 (9th Cir. 2009) (rejecting an invitation to find that the ALJ
23 failed to account for a claimant's injuries "in some unspecified way" when the claimant
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1 did not detail what other limitations flow from the evidence of his injuries, beyond the
2 limitations already listed in the RFC).

3 2. Dr. Bunnell

4 Dr. Bunnell examined Plaintiff on November 12, 2011. AR 399-410. Based on
5 this examination, Dr. Bunnell opined that Plaintiff would not have any functional
6 limitations, beyond the need to avoid balancing and climbing, and operating a motor
7 vehicle, working at heights and around heavy machinery due to her reports of fainting
8 spells. AR 403-10.

9 The ALJ assigned “some weight” to Dr. Bunnell’s opinion, reasoning that it was
10 consistent with the results of Dr. Bunnell’s examination, but that Dr. Bunnell only
11 examined Plaintiff once, and that the medical record justified the additional limitations
12 contained in the RFC. AR 2062.

13 Plaintiff contends that Dr. Bunnell’s opinion is actually inconsistent with the
14 results of his examination, which revealed reduced sensation in Plaintiff’s right hand and
15 lateral left calf. Dkt. 14, p. 5, citing AR 401-03. Dr. Bunnell’s finding that Plaintiff had
16 mildly reduced sensation in her hand and left calf is not inconsistent with his conclusion
17 that Plaintiff would not have any meaningful functional limitations, and even if the ALJ
18 erred in assessing Dr. Bunnell’s opinion, any error would be harmless, given that the
19 ALJ assessed significantly more restrictive limitations than Dr. Bunnell. *Molina v. Astrue*,
20 674 F.3d 1104, 1115 (9th Cir. 2012) (noting that harmless error principles apply in the
21 Social Security context).

1 3. Dr. Karuna

2 Dr. Karuna examined Plaintiff concerning left shoulder and neck pain as well as
3 problems with her hands, on November 14, 2008. AR 546-50. Based on the results of
4 her examination, Dr. Karuna opined that Plaintiff would have no limitations with respect
5 to sitting, standing, or walking, but would be unable to lift or carry more than 10 pounds
6 occasionally, would have “significant” manipulative limitations with respect to handling,
7 feeling, grasping, or fingering, and could reach frequently. AR 546-50.

8 The ALJ assigned “some weight” to Dr. Karuna’s opinion, reasoning that Dr.
9 Karuna’s opinion that Plaintiff would have no sitting, standing, or walking limitations was
10 consistent with the record, but that her opinion regarding Plaintiff’s lifting, reaching, and
11 manipulative limitations was inconsistent with Plaintiff’s testimony at the March 23, 2010
12 hearing. At the March 23, 2010 hearing she testified that she could lift up to 50 pounds
13 and manipulate objects as small as a paper clip without difficulty, and with the
14 essentially normal results of physical examinations and diagnostic tests conducted
15 between 2008 and 2011. AR 2062-63.

16 An inconsistency with the medical record can serve as a specific and legitimate
17 reason for discounting limitations assessed by a physician. See 20 C.F.R. §§
18 404.1527(c)(4), 416.927(c)(4) (“Generally, the more consistent a medical opinion is with
19 the record as a whole, the more weight [the Social Security Administration] will give to
20 that medical opinion.”); *Ghanim v. Colvin*, 763 F.3d 1154, 1161 (9th Cir. 2014) (An ALJ
21 may give less weight to medical opinions that conflict with treatment notes).

22 The ALJ’s conclusions are consistent with Plaintiff’s statements during the March
23 2010 hearing, during which she testified that she could lift 50 pounds “here and there”
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1 and could probably lift up to 20 pounds regularly, could manipulate doorknobs, and
2 buttons and zippers “most of the time”, pick up loose change, and manipulate objects as
3 small as a paper clip. AR 658-59, 677-78.

4 The ALJ’s finding is also consistent with the medical record, which indicates that
5 despite exhibiting tingling, numbness, and weakness in her hands, electrodiagnostic
6 tests conducted on Plaintiff’s hands in July 2011 were normal, and revealed no
7 evidence of carpal tunnel syndrome. AR 344-47.

8 4. Dr. McCollom

9 Clinical Psychologist Dr. McCollom evaluated Plaintiff on October 23, 2007 at the
10 request of the Washington Department of Social and Health Services (“DSHS”). AR
11 562-75. Dr. McCollom’s evaluation consisted of a clinical interview, a mental status
12 evaluation, and psychological testing. Based on the results of this evaluation, Dr.
13 McCollom opined that Plaintiff would be able to maintain adequate attentional control to
14 perform tasks involving memory and concentration, would not become overwhelmed or
15 anxious by demands or expectations that she function efficiently and with sufficient
16 speed in a work setting, and had no problems with respect to memory speed or in the
17 acquisition of information from memory. AR 572.

18 Dr. McCollom opined that while Plaintiff’s ability to reason and make decisions
19 “may sometimes” be compromised by her symptoms, her overall level of cognitive
20 functioning was above average, and that Plaintiff’s ability to interact with others in a
21 work setting would “most likely” be compromised by manic episodes related to her
22 bipolar disorder. AR 573. Dr. McCollom added that Plaintiff “might be appropriate for
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1 work that requires interfacing with the public on a limited basis if she has appropriate
2 supervision.” *Id.*

3 Dr. McCollom further opined that Plaintiff had no limitations with respect to her
4 ability to understand, remember and follow instructions in routine tasks that require both
5 immediate and delayed memory, and could perform simple or complex tasks in a work
6 setting. AR 573-74. Dr. McCollom added that Plaintiff’s ability to maintain concentration,
7 persistence, and pace were not impaired, but that her bipolar symptoms “might” impose
8 moderate limitations on her ability to withstand the day-to-day stresses associated with
9 work activity. AR 574.

10 Dr. McCollom concluded that Plaintiff possessed the cognitive capabilities to be
11 successful at work, but that her bipolar symptoms might interfere with her ability to hold
12 a job, and that her prognosis for work was “guarded.” AR 575.

13 The ALJ found that Dr. McCollom’s opinion that Plaintiff could understand,
14 remember, and follow simple to complex instructions and maintain attention and
15 concentration sufficient to perform simple, repetitive tasks was supported by the record,
16 which indicates that Plaintiff’s mental health symptoms improved with medication and
17 mental health counseling. AR 2063.

18 However, the ALJ assigned “little weight” to Dr. McCollom’s opinion that Plaintiff
19 might have difficulty interacting with others and sustaining pace in a work setting,
20 reasoning that: (1) at the time of Dr. McCollom’s evaluation, Plaintiff was not taking her
21 prescribed medication, which improved her symptoms; (2) Dr. McCollom’s opinion is
22 inconsistent with the results of Plaintiff’s self-reported activities of daily living; (3) Dr.
23 McCollom’s opinion is inconsistent with the results of his own examination, during which
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1 he interacted with Plaintiff in a calm and friendly manner; and (4) Dr. McCollom's
2 opinion is inconsistent with the results of a consultative examination conducted in
3 November 2008 (AR 541-45), during which Plaintiff did not exhibit any difficulties with
4 maintaining concentration, persistence, or pace. AR 2063.

5 Plaintiff contends that her mental functional limitations "persisted for many years,
6 even while she was taking medication." Dkt. 14, p. 6. However, Plaintiff does not dispute
7 that her mental health symptoms improved when she was compliant with her treatment
8 regimen, and does not propose that the restrictions contained in Dr. McCollom's
9 opinion, even if credited as true, would result in social and concentration limitations
10 beyond those already contained in Plaintiff's RFC -- which restricts Plaintiff to
11 performing no more than simple, routine tasks with a reason level of two, occasional
12 interaction with co-workers, and no more than incidental contact with the public. AR
13 2046; *see infra* Section IV.A.6.

14 5. Dr. Borisovskaya

15 Psychiatrist Dr. Borisovskaya examined Plaintiff on November 16, 2008. AR 541-
16 45. Dr. Borisovskaya's evaluation consisted of a clinical interview, a review of Plaintiff's
17 function report and Dr. McCollom's evaluation, and a mental status examination.

18 Based on the results of her evaluation, Dr. Borisovskaya opined that Plaintiff
19 would be able to perform simple and repetitive, as well as detailed and complex tasks,
20 given the results of her examination, Plaintiff's self-reported activities of daily living, and
21 her description of her past work. AR 545.

22 Dr. Borisovskaya further opined that Plaintiff would have trouble getting through
23 the workday without interference from her mental health problems because she
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1 continues to have mood instability, and work-related stress would cause her difficulties
2 and possibly exacerbate her symptoms. *Id.*

3 Dr. Borisovskaya recommended that Plaintiff have a payee, based on her self-
4 reported difficulties handling money, and noted that Plaintiff might have difficulty getting
5 along with co-workers and the public based on her self-reported difficulties getting along
6 with previous employers and her criminal history. *Id.*

7 The ALJ assigned “some weight” to Dr. Borisovskaya’s opinion, reasoning that
8 her opinion that Plaintiff could perform simple, repetitive tasks, as well as detailed and
9 complex tasks, and that Plaintiff’s difficulties getting along with coworkers and
10 supervisors would not be significant enough to prevent her return to work was
11 supported by the record, which indicates that while Plaintiff reported a history of
12 interpersonal conflict, she generally presented in a cooperative manner and had no
13 significant problems interacting with others on a brief and superficial basis. AR 2063.

14 However, the ALJ assigned “little weight” to Dr. Borisovskaya’s opinion that
15 Plaintiff would have trouble getting to work every day and getting through a workday
16 due to mood instability, reasoning that the only support for this opinion were the
17 claimant’s self-reported symptoms, and it was inconsistent with the results of Dr.
18 Borisovskaya’s own examination, which showed that Plaintiff presented with a euthymic
19 mood and calm affect. *Id.*

20 An ALJ may reject a physician’s opinion “if it is based ‘to a large extent’ on a
21 claimant’s self-reports that have been properly discounted as incredible.” *Tommasetti v.*
22 *Astrue*, 533 F.3d 1035, 1041 (9th Cir. 2008) (quoting *Morgan v. Comm’r. Soc. Sec.*
23 *Admin.*, 169 F.3d 595, 602 (9th Cir. 1999)).

1 This situation is distinguishable from one in which the doctor provides her own
2 observations in support of her assessments and opinions. *See Ryan v. Comm’r of Soc.*
3 *Sec. Admin.*, 528 F.3d 1194, 1199-1200 (9th Cir. 2008). “[W]hen an opinion is not more
4 heavily based on a patient’s self-reports than on clinical observations, there is no
5 evidentiary basis for rejecting the opinion.” *Ghanim v. Colvin*, 763 F.3d 1154, 1162 (9th
6 Cir. 2014) (citing *Ryan*, 528 F.3d at 1199-1200).

7 For the reasons discussed below, the ALJ provided clear and convincing reasons
8 for discounting Plaintiff’s testimony. *See infra* Section IV.B.

9 Further, while Dr. Borisovskaya's opinion is supported by her own clinical
10 observations, and the results of a mental status examination, Dr. Borisovskaya explicitly
11 noted that Plaintiff’s description of her past social difficulties were based on her self-
12 reports, and stated that she “may” have similar problems in the future. AR 545. Dr.
13 Borisovskaya’s equivocal language is consistent with the results of her examination,
14 during which Plaintiff was calm and cooperative, and did not exhibit any mood
15 abnormalities. AR 543-44.

16 Finally, Dr. Borisovskaya explicitly found that Plaintiff’s communication and
17 interpersonal problems were not significant enough to prevent her from returning to
18 work, a conclusion broadly consistent with the ALJ’s finding that Plaintiff could perform
19 work with a range of work-related social limitations. AR 545, 2046.

20 6. Dr. Wingate

21 Psychologist Dr. Wingate examined Plaintiff on February 8, 2010 for DSHS. AR
22 1436-51. Dr. Wingate’s evaluation consisted of a clinical interview, a mental status
23 examination, a review of the available records, and psychological testing. Based on the
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1 results of this evaluation, Dr. Wingate opined that Plaintiff would have a range of mild,
2 moderate and marked mental limitations, and would be unable to participate in work
3 activity. AR 1442, 1508-09.

4 The ALJ assigned “little weight” to Dr. Wingate’s opinion, reasoning that: (1) to
5 the extent Plaintiff was experiencing a flare up of her mental health symptoms at this
6 time, this was due to her not taking her prescribed medication for three months; (2) Dr.
7 Wingate provided no clinical support for her conclusion that Plaintiff would have marked
8 limitations with respect to interacting appropriately with the public, responding to
9 pressures and the expectations of a normal work setting, and maintaining appropriate
10 behavior in a work setting; and (3) Dr. Wingate’s opinion is inconsistent with Plaintiff’s
11 self-reported activities of daily living. AR 2064.

12 Plaintiff states that her failure to take her prescribed medications for three
13 months is not a legitimate reason for discounting Dr. Wingate’s opinion. Dkt. 14, p. 8.
14 However, an inadequately explained failure to follow a prescribed treatment regimen
15 can serve as a specific and legitimate reason for discounting a physician’s opinion. See
16 Social Security Ruling (“SSR”) 16-3p (if an individual fails to follow prescribed treatment
17 that might improve symptoms, an ALJ may find that the alleged intensity of an
18 individual’s symptoms is inconsistent with the record. SSR 16-3p; *see also Fair v.*
19 *Bowen*, 885 F.2d 597, 603 (9th Cir. 1989) (“[A]n unexplained, or inadequately
20 explained, failure to . . . follow a prescribed course of treatment . . . can cast doubt on
21 the sincerity of the claimant’s pain testimony.”).

22 Here, the record indicates that while Plaintiff has sometimes refused to take
23 some of her medications, citing their ineffectiveness or side effects, and has
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1 occasionally been unable to take her medication, due to transportation and mail issues
2 and travel, she has more typically not provided an adequate explanation for her non-
3 compliance, acknowledged that her symptoms improved significantly when she was
4 compliant with her treatment regimen, and sought to resume her regimen following
5 periods of non-compliance. AR 292-93, 304-05, 313, 519-20, 523-25, 528-29, 531-33,
6 538-39, 542, 563-64, 571, 577-78, 580-82, 1130, 1393, 1442-43, 1572-73, 1577, 1601-
7 02, 1605-06, 1789, 1807-09, 1812, 1879-82, 1886-87, 1893, 1916, 1920, 2637-38. See
8 20 C.F.R. §§ 404.1529(c)(3)(iv), 416.929(c)(3)(iv) (the effectiveness of medication and
9 treatment are relevant to the evaluation of a claimant's alleged symptoms); *Wellington*
10 *v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017) (evidence of medical treatment
11 successfully relieving symptoms can undermine a claim of disability).

12 The ALJ provided additional reasons for discounting Dr. Wingate's opinion,
13 therefore the Court need not assess whether these reasons were proper -- any error
14 would be harmless. See *Presley-Carrillo v. Berryhill*, 692 Fed. Appx. 941, 944-45 (9th
15 Cir. 2017) (citing *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th
16 Cir. 2008)) (although an ALJ erred on one reason he gave to discount a medical
17 opinion, "this error was harmless because the ALJ gave a reason supported by the
18 record" to discount the opinion).

19 7. Dr. Neims

20 Clinical Psychologist Dr. Neims evaluated Plaintiff three times for DSHS. Dr.
21 Neims first examined Plaintiff on December 22, 2011. AR 1529-50. Dr. Neims'
22 evaluation consisted of a clinical interview, a mental status examination, and
23 psychological testing. Based on the results of this evaluation, Dr. Neims opined that
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1 Plaintiff would have a range of mild, moderate, and marked work-related mental
2 limitations. AR 1533, 1543-45.

3 Dr. Neims examined Plaintiff again on September 3, 2013. AR 1552-70. His
4 evaluation again consisted of a clinical interview, a mental status examination, and
5 psychological testing. Based on the results of this evaluation, Dr. Neims again opined
6 that Plaintiff would have a range of mild, moderate, and marked work-related mental
7 limitations. AR 1556.

8 Dr. Neims examined Plaintiff for the third time on July 23, 2015. AR 1848-65. His
9 evaluation again consisted of a clinical interview, a mental status examination, and
10 psychological testing, and he assessed identical mild, moderate, and marked work-
11 related mental limitations to those he assessed in 2013. AR 1850, compare with AR
12 1556.

13 The ALJ gave “little weight” to Dr. Neims’ opinions, reasoning that: (1) Plaintiff
14 was not taking her medication reliably during the period at issue; and (2) Plaintiff’s
15 presentation during Dr. Neims’ evaluations was inconsistent with her behavior during
16 examinations from the same period. AR 2064-65.

17 For the reasons discussed above in connection with Dr. Wingate’s opinion, the
18 ALJ’s conclusion that Plaintiff was often non-compliant with her treatment regimen, and
19 that her symptoms improved while she was on medication, is supported by substantial
20 evidence. *See supra* Section IV.A.6.

21 8. Dr. Zolnikov

22 Dr. Zolnikov examined Plaintiff for DSHS on August 26, 2015. AR 1866-75. Dr.
23 Zolnikov’s evaluation consisted of a review of a brief disability questionnaire completed
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1 by Plaintiff, a clinical interview, and a mental status examination. Based on the results of
2 this evaluation, Dr. Zolnikov opined that Plaintiff would have a range of mild, moderate,
3 and marked mental limitations. AR 1868.

4 The ALJ assigned “very little weight” to Dr. Zolnikov’s opinion, again citing
5 Plaintiff’s history of sporadic medication compliance, noting that Plaintiff was not taking
6 her medication when she visited Dr. Zolnikov, her functional capacity improved
7 significantly when she began taking her medication regularly, and that her symptoms
8 were stable even when dealing with personal stressors. AR 1878, 1882, 1886-87, 1893,
9 2065. For the reasons discussed above in connection with the opinions of Dr. Wingate
10 and Dr. Neims, the ALJ’s conclusions concerning Plaintiff’s medication non-compliance
11 and her improvement with treatment are supported by substantial evidence. *See supra*
12 Sections IV.A.6 and IV.A.7.

13 B. Whether the ALJ erred in evaluating Plaintiff’s testimony

14 Plaintiff contends that the ALJ did not provide clear and convincing reasons for
15 discounting her symptom testimony. Dkt. 14, pp. 14-16.

16 In weighing a Plaintiff’s testimony, an ALJ must use a two-step process. *Trevizo*
17 *v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017). First, the ALJ must determine whether
18 there is objective medical evidence of an underlying impairment that could reasonably
19 be expected to produce some degree of the alleged symptoms. *Ghanim v. Colvin*, 763
20 F.3d 1154, 1163 (9th Cir. 2014). If the first step is satisfied, and provided there is no
21 evidence of malingering, the second step allows the ALJ to reject the claimant’s
22 testimony of the severity of symptoms if the ALJ can provide specific findings and clear
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1 and convincing reasons for rejecting the claimant's testimony. *Id.* See *Verduzco v.*
2 *Apfel*, 188 F.3d 1087, 1090 (9th Cir. 1999).

3 In discounting Plaintiff's symptom testimony, the ALJ reasoned that: (1) Plaintiff's
4 allegations concerning her cervical and lumbar impairments are inconsistent with the
5 record, which indicates that Plaintiff's cervical degenerative disc disease largely
6 resolved with surgery, and her lumbar pain was episodic and intermittent; (2) Plaintiff's
7 allegations are inconsistent with her self-reported activities of daily living; (3) Plaintiff's
8 headaches were episodic, and intermittent exacerbations were managed with
9 medication; (4) Plaintiff's carpal tunnel symptoms improved when she wore wrist
10 braces, and she was able to perform a wide range of manipulative activities; (5)
11 exacerbations in Plaintiff's mental health symptoms occurred when she stopped taking
12 her medication, or in the context of situational stressors, and Plaintiff's mental health
13 symptoms improved when she was compliant with her treatment regimen; and (6)
14 Plaintiff's allegations concerning her mental health symptoms are inconsistent with her
15 self-reported activities of daily living. AR 2061-62.

16 Plaintiff concedes that her cervical spine problems largely resolved following her
17 June 2010 cervical discectomy and fusion surgery, but argues is not a convincing
18 reason to reject her testimony about the limitations she had prior to her surgery. Dkt. 14,
19 p. 15; AR 412. However, as discussed above in connection with the opinion evidence,
20 particularly the opinions of Dr. DeBolt, Dr. Bunnell, and Dr. Karuna, the record between
21 Plaintiff's alleged onset date of June 4, 2007 and June 2010 does not support limitations
22 beyond those contained in the existing RFC. See *supra* Section IV.A.

1 With respect to Plaintiff's lumbar pain and headaches, Plaintiff contends that the
2 fact that her condition improved for short periods is not a clear and convincing reason
3 for discounting Plaintiff's testimony. Dkt. 14, p. 15.

4 The ALJ's finding that Plaintiff's lumbar pain was episodic, intermittent, and
5 resulted in few functional limitations is supported by the record, which indicates that
6 Plaintiff periodically complained of lower back pain, imaging of her lumbar spine
7 revealed a small disc protrusion and mild canal stenosis, and the physicians who
8 offered opinions concerning Plaintiff's physical limitations, including Dr. DeBolt, Dr.
9 Bunnell, and Dr. Karuna, all opined that Plaintiff would have few limitations with respect
10 to sitting, standing, or walking. AR 350, 377, 403-10, 462-63, 546-50, 696-97, 1320,
11 1330.

12 The ALJ's finding that Plaintiff's headaches were episodic, intermittent
13 exacerbations were managed with medication is supported by Plaintiff's own hearing
14 testimony, in which she stated that her migraines gradually improved, and were
15 effectively managed with over the counter medication such as Excedrin. AR 2645-48.

16 Regarding Plaintiff's carpal tunnel syndrome, Plaintiff contends that much of the
17 evidence the ALJ cited in support of her findings is from "years ago." Dkt. 14, p. 15;
18 citing AR 2061-62. Plaintiff does not cite more recent evidence inconsistent with the
19 ALJ's conclusions, and as discussed above in connection with Dr. DeBolt's opinion, the
20 ALJ acknowledged that the medical record after 2012 indicated that Plaintiff did have
21 manipulative limitations associated with her carpal tunnel syndrome, and assessed
22 physical limitations consistent with this finding. AR 2062; *see supra* Section IV.A.1.

1 C. Whether the ALJ erred in evaluating statements from other sources

2 Plaintiff contends that the ALJ erred by not properly evaluating statements from
3 counselors Sirrah M. Williams, B.A., and Ron Lewis, M.S., Sylvia Lagdan, ARNP,
4 occupational therapist Stephanie Tollan, Plaintiff's daughter, and Plaintiff's mother. Dkt.
5 14, pp. 8-9, 12-13, 16-18.

6 When evaluating opinions from non-acceptable medical sources, an ALJ may
7 expressly disregard such testimony if the ALJ provides "reasons germane to each
8 witness for doing so." *Turner v. Commissioner of Social Sec.*, 613 F.3d 1217, 1224 (9th
9 Cir. 2010) (citing *Lewis v. Apfel*, 236 F.3d 503, 511 (9th Cir. 2001); 20 C.F.R. §§
10 404.1502, 416.902).

11 1. Ms. Williams and Ms. Lewis

12 Plaintiff's counselors, Ms. Williams and Ms. Lewis, offered an opinion concerning
13 her work-related mental limitations on April 14, 2010, after treating Plaintiff for about
14 eight months. AR 465-68. Ms. Williams and Ms. Lewis opined that Plaintiff would have a
15 range of moderate and marked mental limitations stemming from her bipolar disorder.
16 AR 465-68.

17 The ALJ gave "little weight" to this opinion, reasoning that: (1) it was inconsistent
18 with the medical record; (2) it was inconsistent with Plaintiff's self-reported activities; (3)
19 Plaintiff failed to show up for three of her therapy appointments; and (4) Ms. Williams'
20 treatment notes indicate that Plaintiff's mental health symptoms improved with
21 treatment. AR 2064.

22 In citing the inconsistency between the opinion of Ms. Williams and Ms. Lewis
23 and the medical record, the ALJ has provided a germane reason for discounting it. See
24
25

1 *Baylis v. Barnhart*, 427 F.3d 1214, 1218 (9th Cir. 2005) (“Inconsistency with medical
2 evidence” is a germane reason for discrediting lay testimony).

3 2. Ms. Lagdan

4 On July 15, 2009, Ms. Lagdan opined that Plaintiff’s bipolar symptoms would
5 render her unable to work for six months. AR 1506-07. On February 7, 2011, Ms.
6 Lagdan opined that Plaintiff would be limited to working for between one and ten hours
7 per week due to her bipolar symptoms. AR 1510-11.

8 The ALJ assigned “little weight” to Ms. Lagdan’s opinion, reasoning that it was
9 inconsistent with essentially normal contemporaneous mental status exams. AR 2064.
10 In citing this inconsistency, the ALJ has provided a germane reason for discounting Ms.
11 Lagdan’s opinion.¹ *Baylis*, 427 F.3d at 1218.

12 3. Ms. Tollan

13 On July 30, 2015 occupational therapist Ms. Tollan examined Plaintiff, and
14 opined that she would be able to stand and/or walk for between one and one and a half
15 hours in an eight-hour day, and would have no limitations with respect to sitting. AR
16 2559. Ms. Tollan further opined that Plaintiff could never to seldom climb stairs, seldom
17 squat/kneel, occasionally stoop/bend, frequently reach forward and occasionally reach
18 overhead, and had a mild coordination deficit in her hands. *Id.*

19 Ms. Tollan found that Plaintiff could perform sedentary work, but might not
20 tolerate this on a full-time basis given her migraines and reports of a stabbing sensation
21 in her feet. AR 2560.

22
23 ¹ Plaintiff contends that the ALJ erred by failing to evaluate Ms. Lagdan’s July 2009 opinion. Dkt. 14, p. 9.
24 While the ALJ did not mention this opinion, she did cite to it, and evaluated the limitations contained
25 therein. AR 2064.

1 The ALJ assigned “very little weight” to Ms. Tollan’s opinion, reasoning that: (1) it
2 was inconsistent with Plaintiff’s self-reported activities and her hearing testimony; and
3 (2) Ms. Tollan suspected that Plaintiff was giving less than her full effort. AR 2065-66.

4 In citing the disparity between Plaintiff’s self-reported activities and capabilities
5 and Ms. Tollan’s findings, the ALJ has provided a germane reason for discounting her
6 opinion. *Carmickle v. Comm’r of Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2007)
7 (conflict between lay witness testimony with plaintiff’s activities of daily living constitutes
8 a germane reason for rejecting such testimony);

9 4. Plaintiff’s Mother

10 Plaintiff’s mother provided a statement concerning her functional capacity on
11 August 11, 2007, but was unable to provide much detail concerning Plaintiff’s
12 limitations, stating that she did not live with Plaintiff and was unfamiliar with her daily
13 routine. AR 170-77.

14 The ALJ discounted her opinion, reasoning that her limited subjective
15 observations of Plaintiff did not support limitations greater than those contained in
16 Plaintiff’s RFC. AR 2067.

17 Plaintiff contends that the ALJ’s reason is not germane because Plaintiff’s
18 mother’s “observations were not subjective; observations are objective.” Dkt. 14, p. 17.

19 Regardless of whether one classifies the observations of a family member as
20 subjective or objective, Plaintiff’s mother was clear that she had limited information
21 concerning her daughter’s functional capacity, and the ALJ has provided a germane
22 reason for not assigning more weight to her statement.

5. Plaintiff's Daughter

Plaintiff's daughter provided two statements concerning her mother's functional capacity in May 2014, both of which were broadly consistent with Plaintiff's allegations concerning her physical and mental limitations. AR 965-72, 980-82, 1233-40.

The ALJ discounted these statements, finding that they were inconsistent with Plaintiff's activities of daily living, and did not justify limitations beyond those contained in the RFC. AR 2067. In citing the inconsistency of these statements with Plaintiff's activities, the ALJ has provided a germane reason for discounting them. *Carmickle v. Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1164 (9th Cir. 2007); see also *Valentine v. Comm'r, Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir. 2009) (An ALJ may reject lay witness testimony for the same reasons he or she rejected a claimant's subjective complaints if the lay witness statements are similar to such complaints).

CONCLUSION

Based on the foregoing discussion, the Court finds the ALJ properly determined Plaintiff to be not disabled. Defendant's decision to deny benefits therefore is AFFIRMED.

Dated this 6th day of January, 2021.

Theresa L. Frutke

Theresa L. Fricke
United States Magistrate Judge